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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

GABRIEL LUIS GONZALES,

Defendant and Appellant.

F068491

(Super. Ct. No. CRM026701)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. Mark V. Bacciarini, Judge.

Janice Wellborn, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Rebecca Whitfield, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Kane, J. and Poochigian, J.

Appellant Gabriel Luis Gonzales requests we conduct an independent review of the *Pitchess*¹ hearing conducted by the trial court. Because we find the record sufficiently detailed to provide a meaningful review and that the trial court did not abuse its discretion in failing to require production of any files, we affirm. At the People's request, however, we remand to the trial court to correct the abstract of judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On March 4, 2013, Merced Police Officer Jeffrey Gonzales attempted to stop appellant for failing to have a rear reflector on his bicycle. Appellant fled and a chase ensued. Officer Gonzales caught up with appellant, who had repeatedly claimed to be surrendering only to flee again, and physically brought him to the ground. A struggle ensued, during which Officer Gonzales repeatedly struck appellant, in part due to Officer Gonzales's belief that appellant was attempting to take his gun. The struggle continued until another officer arrived and, through additional strikes, the two were able to subdue appellant.

Appellant was searched and methamphetamine was found on his person. As a result, appellant was charged with possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)/count 1), resisting an executive officer (Pen. Code, § 69/count 2), and having no headlight on a bicycle (Veh. Code, § 21201, subd. (d)/count 3). The People dismissed count 3, and proceeded to trial on counts 1 and 2.

Prior to trial, appellant sought discovery into Officer Gonzales's personnel records pursuant to *Pitchess* and its progeny. The trial court denied appellant's motion without prejudice on May 29, 2013, based on appellant's failure to support the request with

¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

sufficient detail. Appellant corrected this shortcoming through a supplemental declaration.

As a result, the trial court began the *Pitchess* process.² An in camera inspection was held on June 18, 2013. At that inspection, which was transcribed, a custodian of records appeared and was placed under oath. The custodian alleged that no documents were pertinent to appellant's request for evidence relating to dishonesty or the prior use of excessive force. However, the custodian had brought Officer Gonzales's personnel file to the hearing, which contained one community complaint and at least six performance reviews containing evaluations, certificates, commendations, and information related to pay. The trial court reviewed these documents at the People's request, ostensibly to avoid the appearance of a selective determination of relevance, and detailed each before concluding that none were relevant to the case. The trial court then went on record and informed appellant that it had found no discoverable information.

Appellant was convicted by a jury of counts 1 and 2. Appellant's subsequent sentencing covered multiple cases. Relevant to this appeal, he received eight-month sentences on both counts 1 and 2, running consecutive to each other and to his sentence in other cases. This appeal timely followed.

Upon reaching this court, appellant requested, and we granted, augmentation of the record to include the transcripts from and the files reviewed in the *Pitchess* hearings. In response, on May 2, 2014, the trial court held a confidential hearing to create a settled statement regarding the prior *Pitchess* proceedings.³ The record custodian was again

² The record on appeal does not contain an order in response to appellant's supplemental declaration in support of his motion, but the court set an in camera inspection at a pretrial hearing on June 14, 2013, demonstrating the motion was granted.

³ Appellant requests we review the May 2, 2013 in camera inspection. The record reflects no such inspection occurred. It appears appellant has confused the timing of the May 2, 2014 settled statement hearing. We have reviewed all relevant hearings supported by the record.

present and again placed under oath. The custodian confirmed that all of the documents the trial court had previously reviewed were still present in the relevant files, and provided the documents to the court to review. Upon review, the trial court confirmed it was viewing the same documents it had previously considered and ordered the community complaint be copied and provided to this court. The trial court further noted there were no documents missing, and that no other documents had been reviewed at the June 18, 2013 in camera hearing.

Appellant filed his opening brief in September 2014, and the People responded in October 2014. No reply brief was filed. In December 2014, having received only the aforementioned community complaint in response to the order to augment the record, we again requested the record be augmented to include all files reviewed at the June 18, 2013 in camera hearing.

The trial court held two additional hearings on our second order. Through these hearings, the trial court found that the documents previously contained in Officer Gonzales's personnel file, which had been reviewed in June 2013 and May 2014, were no longer present. No explanation was given why; only a statement there was no trace of them after a diligent search.

DISCUSSION

Standard of Review and Applicable Law

Pitchess motions are the well-settled mechanism by which defendants can screen law enforcement personnel files for evidence that may be relevant to their defense without compromising the officer's reasonable expectation of privacy in those records. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1225 (*Mooc*).) Subject to various restrictions not relevant here, a trial court must conduct an in camera review of potentially relevant personnel files if the defendant makes a showing of good cause for the discovery. (*Id.* at p. 1226.)

This process is effectuated by having a custodian of records collect all potentially relevant documents from identified personnel files and present them to the trial court. The custodian “should be prepared to state in chambers and for the record what other documents (or category of documents) not presented to the court were included in the complete personnel record, and why those were deemed irrelevant or otherwise nonresponsive to the defendant’s *Pitchess* motion.” (*Mooc, supra*, 26 Cal.4th at p. 1229.)

The trial court must then make a record of what documents it has examined to permit future appellate review. (*Mooc, supra*, 26 Cal.4th at p. 1229.) “If the documents produced by the custodian are not voluminous, the court can photocopy them and place them in a confidential file. Alternatively, the court can prepare a list of the documents it considered, or simply state for the record what documents it examined.” (*Ibid.*) These proceedings are then sealed. (*Ibid.*)

On appeal, we independently examine the record made by the trial court “to determine whether the trial court abused its discretion in denying a defendant’s motion for disclosure of police personnel records.” (*People v. Prince* (2007) 40 Cal.4th 1179, 1285 (*Prince*).)

The Trial Court Did Not Abuse Its Discretion

We have reviewed the community complaint in this matter as well as the full set of transcripts and settled statements relevant to this issue.

The trial court complied with the required *Pitchess* procedures. A custodian of records was present and placed under oath. Potentially relevant documents were reviewed and considered in light of appellant’s discovery motion. The court created an accounting of what was reviewed and why it was not relevant or subject to production. And these proceedings were stenographically recorded. (*Mooc, supra*, 26 Cal.4th at p. 1229.) Our independent review finds the trial court did not abuse its discretion by not providing access to the community complaint. The complaint contains no indication that Officer Gonzales used excessive force or was dishonest.

We cannot, of course, review the personnel files that were before the trial court. While the loss of confidential personnel records, which were recently the subject of a *Pitchess* analysis for a case still pending on appeal, significantly concerns this court, the loss has no ultimate bearing on the outcome of this case. The documents were presented to the trial court only to avoid any later appearance of impropriety regarding the custodian's relevance determination. Although this presentation was unnecessary, and has led to minor complications in this matter, the trial court detailed on the record what was viewed and why it was not relevant to the pending *Pitchess* request. (See *Mooc*, *supra*, 26 Cal.4th at pp. 1229-1230 [noting that personnel files often contain irrelevant documents, such as "those describing marital status and identifying family members, employment applications, letters of recommendation, promotion records, and health records" and concluding that complete personnel files need not be produced in most instances].) Accordingly, on the specific facts before us, the record is sufficient to afford a meaningful appellate review. (*Prince*, *supra*, 40 Cal.4th at pp. 1285-1286; *People v. Jackson* (1996) 13 Cal.4th 1164, 1221, fn. 10.) The written record of what was reviewed and why it was not relevant contained in the record has sufficient detail for us to conclude there was no abuse of discretion by the trial court.

The Abstract of Judgment Must Be Corrected

In their responsive brief, the People note the abstract of judgment does not reflect appellant's conviction on count 2 and the resulting sentence. Appellant was properly convicted on this count and sentenced to a term of eight months, to run consecutively to count 1. The conviction and sentence are not listed in the abstract of judgment. Appellant has not opposed the requested correction. Upon remand, the clerk shall correct the abstract of judgment to reflect appellant's sentence on count 2. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

DISPOSITION

The judgment is affirmed. The trial court is ordered to correct the abstract of judgment to properly identify the sentence imposed on count 2. The trial court is directed to prepare an amended abstract of judgment consistent with this order and forward a certified copy to the California Department of Corrections and Rehabilitation.